

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
	)	
Applications of Sprint Nextel Corporation,	)	
Transferor	)	IB Docket No. 12-343
	)	
and	)	
	)	
SOFTBANK CORP., and Starburst II, Inc.,	)	
Transferees	)	
	)	
for Consent to Transfer of Control of Licenses	)	
and Authorizations	)	

**OPPOSITION OF CLEARWIRE CORPORATION TO DISH  
SUPPLEMENT TO REQUEST TO HOLD PROCEEDING IN ABEYANCE**

Clearwire Corporation (“Clearwire”) hereby opposes the supplement (“Supplement”) submitted by DISH Network Corporation (“DISH”) to its earlier-filed request that the Commission hold the above-referenced proceeding in abeyance (the “Abeyance Request”).<sup>1/</sup>

As the Applicants have explained, the Supplement provides no basis to stop the FCC’s ongoing review of any of the applications pending before the Commission in this proceeding.<sup>2/</sup> Granting the Abeyance Request would not, as DISH alleges, allow the Commission to “follow an orderly and deliberative process.”<sup>3/</sup> Instead, a delay in review of the pending applications would undermine the Commission’s long-standing policy of maintaining neutrality in corporate valuation contests by allowing DISH to gain an advantage in its contest for corporate control of

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<sup>1/</sup> See Request to Hold Proceeding in Abeyance of DISH Network L.L.C., IB Docket No. 12-343 (filed Jan. 16, 2013); Supplement to Request to Hold Proceeding in Abeyance of DISH Network Corporation, IB Docket No. 12-343 (filed April 17, 2013) (“Supplement”).

<sup>2/</sup> See Opposition to Supplement to Request to Hold Proceeding in Abeyance of Sprint Nextel Corporation, Starburst II, Inc., and SOFTBANK CORP., IB Docket No. 12-343 (filed April 19, 2013).

<sup>3/</sup> Supplement at 5.

Clearwire and now Sprint. DISH erroneously asserts that the FCC's policy of non-intervention in such matters requires a delay in the Commission's review of the pending applications. Far from leveling the playing field, however, delay at this stage of the proceeding would do nothing other than provide an artificial advantage to DISH in its efforts to displace Sprint's binding agreement with SoftBank. The Communications Act and Commission precedent prohibit such intervention.<sup>4/</sup> Non-intervention is not the same as inaction; in some instances, such as this one, inaction by the Commission favors one party in a corporate contest.

Delay would also be contrary to the public interest because it potentially threatens Clearwire's financial condition, as our Chief Executive Officer explained to Commission officials last month.<sup>5/</sup> In a recent filing with the Securities and Exchange Commission, Clearwire was even more specific: "[i]f the Merger is not completed, we may be forced to explore all available alternatives, including financial restructuring, which could include seeking protection under the provisions of the United States Bankruptcy Code."<sup>6/</sup> Clearwire's Board of Directors is also actively considering whether to not make the June 1, 2013, interest payment on the company's approximately \$4.5 billion of outstanding debt.<sup>7/</sup> The Commission should not permit

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<sup>4/</sup> See 47 U.S.C. § 310(d); *Tender Offers and Proxy Contests*, Policy Statement, 59 Rad. Reg. 2d (P&F) 1536 (1986); *Application of Citadel Communications Company, Ltd. (Assignor) and ACT III Broadcasting of Buffalo, Inc. (Assignee) for Assignment of License of Television Station WUTV (TV), Buffalo, New York*, Memorandum Opinion and Order, 5 FCC Rcd 3842, ¶ 16 (1990) (finding that the Commission "cannot consider whether some other proposal might comparatively better serve the public interest"); *KETX(AM)*, Letter Ruling, 23 FCC Rcd 12687 (MB 2008) (rejecting claims that the Commission should consider whether a competing offer exceeded the transferee's offer to acquire the license).

<sup>5/</sup> See Letter from Vonya B. McCann, Senior Vice President, Government Affairs, Sprint Nextel Corporation, to Ms. Marlene H. Dortch, Secretary, FCC, IB Docket No. 12-343 (filed March 18, 2013).

<sup>6/</sup> Clearwire Corp., Proxy Statement - Merger or Acquisition (definitive), at 4 (filed April 23, 2013), available at <http://corporate.clearwire.com/secfiling.cfm?filingID=1193125-13-167611&CIK=1442505>.

<sup>7/</sup> *Id.*

DISH to disrupt the Commission's review of the transaction, which is nearing its completion, and put Clearwire's financial stability at greater risk.

For the foregoing reasons, Clearwire urges the Commission to promptly conclude its review of the only pending applications it has before it – those between SoftBank and Sprint and between Sprint and Clearwire – and approve them as in the public interest.

Respectfully submitted,

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